

**FLATHEAD COUNTY PLANNING BOARD
MINUTES OF THE MEETING
FEBRUARY 11, 2009**

**CALL TO
ORDER**

A meeting of the Flathead County Planning Board was called to order at approximately 6:00 p.m. Board members present were Marie Hickey-AuClaire, Gordon Cross, George Cullpepper Jr., Frank DeKort, Marc Pitman, Mike Mower, Jim Heim, Rita Hall and Randy Toavs. Alex Hogle and BJ Grieve represented the Flathead County Planning & Zoning Office.

There were 29 people in the audience.

**APPROVAL OF
MINUTES**

DeKort made a motion seconded by AuClaire to approve the January 14, 2009 minutes with corrections. The motion passed unanimously.

**PUBLIC
COMMENT
(not related to
agenda items)**

Don Hines, 2400 Hwy 93 South, Kalispell, brought up an apparent conflict of interest which concerned the board. He hoped the board would discuss their course of action which concerned the conflict during new business. He said the board was jeopardized as well as the county commissioners with this conflict. He felt the board should take an aggressive stance on this issue. He hoped that the board would remedy the issue before it caused problems with the county.

Cross had been out of town and had not read the local paper and asked for clarification on the conflict.

Hines quoted from the newspaper article the Flathead Building Association hired George Culpepper as a full time governmental affairs director. He thought that quote said it all.

Erica Wirtila, Sands Surveying, updated the board on FZC 08-13 Pentelute, et al consideration of a zone change which was carried to tonight's meeting. The county will be the applicant for the growth policy/master plan amendment that will include all of the clients included in the petition as commercial. They were also going to include Midway motors and Oh's body shop which had

recently been successful in a zone change. The public hearing was scheduled for April 8th and the county was carrying on the petition for her clients. Her hope was after the petition was passed, then the applicants could come back and request a zone change.

Charles Lapp, 3230 Columbia Falls Stage Road, brought up the article in the paper which concerned Culpepper and the fact he himself had been a part-time governmental affairs agent for the Flathead Building Association before the association decided to hire Culpepper full time. He said a diverse board was a good thing. He brought up all the other positions people on the board held. He said the members were honorable enough to step down from a vote on an issue if they knew they had a conflict of interest.

**FOX HILL
ESTATES
PHASE 3
(FPP 08-21)**

A request by TML Construction for Preliminary Plat approval of Fox Hill Estates, Phase 3, an eight lot single-family residential subdivision on 12.569 acres. Lots in the subdivision were proposed to connect to a public water and sewer system. The property is located off Mennonite Church Road.

STAFF REPORT

Alex Hogle reviewed staff report FPP 08-21 which included the reason for its appearance in front of the board again.

**BOARD
QUESTIONS**

Culpepper asked about the water rights and said the Department of Natural Resources (DNRC) in the past had problems updating things. He asked who owned the property before the property was sold to the applicants.

Hogel said the current applicants had owned the property for a number of years.

Culpepper said that was where the question lay. He said that when a property was sold, the water rights were sold too. He wondered who owned the land before the applicants.

The applicants said they did. The land had been in their family for generations, since the 1800's.

Hogel said he did look into the Montana Code Annotated to address the issue and time frames of water rights. He read the specific part which pertained to the issue. He surmised the notice of completion had not been filed. The finding in the conditions would offer the applicant the option to bring their

system into compliance.

Cross and Hogel discussed the reason why this was a subsequent hearing.

**APPLICANT
PRESENTATION**

Erica Wirtila, brought up two new pieces of information. She had in the past said the application for water rights was underway, when in fact she was in error. Since that time, she had talked to RLK who was their consultants on water rights on this project and they informed her they had not started the paperwork for the water rights. She went over the procedure for submitting the paperwork and where the application was in the process. The other phases had been approved before the regulations changed to where the water rights were approved before final plat was approved. She apologized for speaking out of turn. She commented on public comment on the water system. The applicants had worked with the Department of Environmental Quality (DEQ) and now the water systems were operating properly. She thanked the board for their time.

**BOARD
QUESTIONS**

Cross asked if Wirtila was alright with the additional findings of fact presented by staff.

Wirtila said yes.

Toavs asked if they had the new letter with her which said the water system was ok.

Wirtila said she would have the letters in the file before the application went before the commissioners.

Cross asked the applicant if they were confident all their water issues were behind them.

The applicants replied affirmatively.

**AGENCY
COMMENTS**

None.

**PUBLIC
COMMENT**

Charles Lapp, 3230 Columbia Falls Stage Road, wanted to comment on the process not necessarily the application. He read several parts of the subdivision regulations which he thought would cause problems later on. He also commented on the subsequent hearing and proper procedure.

**APPLICANT
REBUTTAL**

None.

**STAFF
REBUTTAL**

Grieve said the issue of not providing public notice initially, which brought this application before the board, did provide the opportunity for public comment. Someone who did not read the newspaper may have driven by and read the sign and was prompted to comment.

Cross said he thought Lapp tried to point out a flaw in the procedure which was brought to light by the lack of signage on the property.

**MAIN MOTION
TO ADOPT
F.O.F.
(FPP 08-21)
BOARD
DISCUSSION**

Pitman made a motion seconded by AuClaire to adopt staff report (FPP 08-21) as findings-of-fact.

Cross asked if the board wanted to re-add finding #18 which they had added on the initial planning board hearing. He asked if Hogel still had the original language.

Hogel said no, but he could make a quick copy.

Cross asked for Hogle's copy so the board could make a quick determination if they wanted to keep the original added finding.

The board discussed finding #19 after Cross read the finding to the board.

Mower said they should use shall instead of should.

**SECONDARY
MOTION
(Add F.O.F. #19)**

Mower made the motion seconded by Heim to add finding of fact #19. *Fox Hills Estates Phase 3 is proposed to connect to the water services of the Fox Hills Estates Water and Sewer District, as physically constructed and established in the prior development of Fox Hills Estates Phases 1,2, and 4. Public comment submitted on February 6, 2009 indicated the Montana DNRC has no record on file for a permit to appropriate water for Fox Hills Estates. Prior to Final Plat approval of Fox Hills Estates Phase 3, the applicant shall be required to provide evidence that applicable permit requirements for the water supply of Fox Hills Estates have been met.*

**BOARD
DISCUSSION**

Toavs asked if they had discussed finding of fact #18.

Cross said they didn't need to; it was already in the report. He then asked Pitman to explain the status and procedure for water permits.

Pitman said no permit had been submitted for this project, or for any of the phases. He went over the procedure the application went through to become a permit.

The board discussed water permits, the procedures, and history of water rights as well as the judicial procedures at length.

ROLL CALL
(Add F.O.F #19)

On a roll call vote the motion passed unanimously with Pitman abstaining.

**ROLL CALL TO
ADOPT F.O.F.**
(FPP 08-21)

On a roll call vote the motion passed unanimously.

**MAIN MOTION
TO
RECOMMEND
APPROVAL**
(FPP 08-21)

Pitman made a motion seconded by Culpepper to adopt Staff Report FPP 08-21 and recommend approval to the Board of County Commissioners.

**BOARD
DISCUSSION**

Cross asked Hogle if the two previous changes to the conditions were still part of the recommendation to the commissioners.

Hogle said yes they were.

**SECONDARY
MOTION**
*(Add
Condition #25)*

Heim motioned and Pitman seconded to add: *Condition #25. Prior to Final Plat approval of Fox Hills Estates Phase 3, the applicant shall provide evidence that applicable permit requirements for the water supply of Fox Hills Estates have been met.*

ROLL CALL
*(Add Condition
#25)*

On a roll call vote, the motion passed 8 to 1 with Toavs dissenting.

**ROLL CALL TO
RECOMMEND
APPROVAL**
(FPP 08-21)

On a roll call vote the motion passed unanimously.

**MCGREGOR
PINES
(FPP 08-15)**

A request by Spoklie & Hoover III for Preliminary Plat approval of McGregor Pines, a 28 lot single-family residential subdivision on 181.18 acres. Lots in the subdivision were proposed to have individual water and septic systems. The property is located approximately 1.83 miles east of McGregor Lake on US Highway 2 West in Marion.

STAFF REPORT

Alex Hogle reviewed FPP 08-15 for the board.

**BOARD
QUESTIONS**

Toavs asked if the eagle's nest was on Plum Creek land.

Hogle said he did not know, the Department of Fish, Wildlife and Parks did not specify where it was. He thought they kept that information secret in order to protect the nest. He said they said it was approximately 900 feet south of the southwest corner. The mark which represented the eagle's nest on the map was his approximation.

AuClaire asked how far the nest was from the highway.

Hogle said he did not scale his approximation from the highway and the management plan for the bald eagle did had specific standards.

The board and Hogle discussed whether the plan was based on law or was a recommendation. They also discussed the procedure for determination if there was a nest or not and how construction could continue.

Heim asked about the test holes for ground water and if Hogle was satisfied with where the holes were.

Hogle said the interpretation was challenging. However, after an explanation of his reasons why, he said he was comfortable with where the holes were.

Mower asked if a septic and drain field could be put into a no build zone.

Hogle said no. The lots were very tight in where elements could go, however, a 40' by 40' building pad could be put on all the lots.

The board discussed the lack of options on where to build on the sites.

DeKort asked specifically what a no build zone was.

Hogle said they were an area which was intended to not be constructed on.

Mower said that did not include wells and septic systems.

Hogle said they may in certain cases. He deferred to the applicant on that question.

Cross asked Hogle to research that question while the applicant presented and they come back to the board with a specific answer.

Hogle said he was certain, but wanted to confirm, that there were no wells or drain fields allowed in the no build zone.

APPLICANT PRESENTATION

Eric Mulcahy, Sands Surveying, represented the applicant. He gave a brief history of the application and the mid course correction. He did not suggest in this particular case that wells or septic go into the no build zones. He described the steps which had been taken to comply with the wet land zones and the impacts to the local wildlife. He said the lots look small on the preliminary plat, but in actuality were quite large and were large enough to accommodate everything needed for homes. He was mostly in agreement with the suggestions submitted from the fire department's letter. He was able to contact the Department of Fish, Wildlife and Parks the day after he received the letter which concerned the possible sighting of a bald eagle nest and was able to express his frustration at receiving the letter a few days before the meeting. He received clarification on the letter. They do not know if there was an eagle's nest or not. They had received a tip that there may be an eagle's nest, but do not have a picture of a nesting pair in the vicinity. They went out on Feb 4th, and found no birds and could not determine if the nest was an eagle's or red tailed hawk's nest. If it was an eagle's nest, they could not tell if it had been used in the last couple of years or not. They had witnessed the black tailed tern on the water fowl protection area to the west, but had not sighted the tern on the property in the application. There may be some potential of the property being a habitat. His next question was, were these regulations

BOARD QUESTIONS

which they were dealing with or were they recommendations. The answer was it was a recommendation. He did not agree with an agency putting together a letter which raised more questions than answers. He said the applicant made a serious effort to determine if species would be affected by the development of this subdivision and the results were documented in the environmental assessment which was submitted. He said there was only a small area in which the slopes were over 25 degrees; otherwise it was fairly gently rolling and suited for building.

Culpepper wanted to clarify that Fish Wildlife and Parks said if anything happened to the bald eagle, nothing happened to the applicant.

Mulcahy said his specific question was if they build within a half a mile or a quarter of a mile of the nest, would they be arrested or fined. The answer was no, if there was an eagle.

Mower asked how they determined the no build zones.

Mulcahy said originally when they started the development they went with the building envelopes which took into account the difficulties of the property. After the meeting in August, and the envelopes not being a preferred method of presenting a building site, they went back to a no build zone which essentially meant they created setbacks from all the sensitive areas.

Cross wanted clarification with where the applicant stood with the Marion Fire Chief. There was currently no plan to comply with the department. He asked if he agreed with the current suggestions in the letter submitted from the department.

Mulcahy said yes he did.

Cross asked what his understanding of a no build zone was.

Mulcahy said it was that it would become an area there could not be any construction other than fences. No structures, no outbuildings or well heads.

Pitman asked if roads and driveways were included in that.

Mulcahy said there wouldn't be any reason to have a road or driveway across a no build zone in this development.

Cross asked if a no build zone on the plat was fairly typical in the state and if Mulcahy had seen that as a surveyor.

Mulcahy said he had seen them before with steep slopes and listed the projects he was aware of. Mostly they see them with steep slopes and sometimes on floodplains. They were used when the fear was after ten years someone would try to build on it.

Cross said the standard interpretation was no construction at any time.

DeKort asked how a no build zone related to a vegetative buffer. He asked if there were any vegetative buffers built into the project.

Mulcahy said the proposed open space was a vegetative buffer. The other vegetative buffers did not specify the owner could not mow the grass or cut a tree.

Mower said they could graze animals on the no build zones.

**AGENCY
COMMENTS**

None.

**PUBLIC
COMMENT**

Scott Santa, 3621 Eagles Nest Road, Kalispell, owns property adjacent to the 36 acres and had no problem with the development of the property. He commented on the bald eagle and said there was not a piece of property in the valley where anyone could build if there was a possibility of a bald eagle in the area.

Greg Stevens, 31 Lower Valley Rd, Kalispell, gave his background as a residential appraiser and the boards he had served on. He reviewed the tax purposes of the land up to date and how that would increase once developed. The tax base would increase for the schools, etc in the area. He thought there would be minimal impact on the road systems and visually as well. The other subdivisions he had witnessed by the developer and the roads were first class as well as the layout. It would not impact the roads or the schools. Most of the people who purchase these lots were retired or they were summer homes. He named off the ways the application complied with regulations. He wanted to see the board vote for its approval. He had seen during his time

on different boards letters similar to the letter concerning the bald eagle. He thought the Fish, Wildlife and Parks wanted to appropriate private land through the planning process by calling it a buffer zone and limiting uses on the land. He thought the request was unreasonable in the case at hand. He said nowhere in the letter did it state that the tern or the eagle was threatened or endangered. If they agreed that the eagles need a half a mile north, south, east and west, then that meant over 500 acres impacted by that policy. The suggestion that the applicant should give up 10 lots which would equal conceivably 1.5 million dollars for a habitat for a bird was egregious. He said 87% of the land in the county was owned by either the federal, state, or county government, only 13% was owned privately. That was a lot of acreage for eagles. It seemed unreasonable to him. He lived on Lower Valley Road, saw eagles all the time and he could see Glacier Toyota from his living room. He recapped why he was in favor of the development and urged the board to approve the application.

**APPLICANT
REBUTTAL**

None.

**STAFF
REBUTTAL**

Hogle clarified the open space, location of drain fields and wells. They were required to be placed in accordance to the Montana State Department of Health. No build zones were geared only towards structures.

**MAIN MOTION
TO ADOPT
F.O.F.
(FPP 08-15)**

Pitman made a motion seconded by AuClaire to adopt staff report FPP 08-15 as findings-of-fact.

**BOARD
DISCUSSION**

Toavs wanted to add part of a sentence to #20.

**SECONDARY
MOTION
(Amend F.O.F.
#20)**

Toavs made a motion seconded by AuClaire to add the following to finding #20 *the applicant is working with the local fire authority to meet their requirements.*

**ROLL CALL
(Amend F.O.F.
#20)**

On a roll call vote, the motion passed unanimously.

**SECONDARY
MOTION**
(Add F.O.F. #27)

Toavs motioned and AuClaire seconded to add finding of fact #27 to state *Montana Department of Fish, Wildlife, and Parks comments that there may be an eagle nest in the area. They cannot confirm that it has been used for a few years or that it is even an eagle's nest according to the letter received February 9, 2009.*

ROLL CALL
(Add F.O.F. #27)

On a roll call vote, the motion passed unanimously.

**BOARD
DISCUSSION**

Pitman asked if there were another way to see the staff research any federal or state laws which concerned building near eagles nests, since the board's responsibility was to provide commissioners with information which was pertinent.

Cross said the best thing to do was have staff do the research then report back to the board at a later time as to their findings.

The board discussed the letter regarding the bald eagle.

Culpepper asked where it was stated in any county documents exactly what a no build zone was.

Hogle said there was not one quoted in county documents.

Culpepper said he had heard two definitions of what a no build zone was and he had a problem with having something on the plat when he did not know what the definition was.

Mower said the place to put the definition was in the conditions.

Culpepper preferred that because he needed a defined definition for himself and future planning boards.

**SECONDARY
MOTION TO**
(Add F.O.F. #28)

Cross made a motion seconded by Pitman to add finding of fact #28. *The Flathead County sanitarian sent a letter on 2/4/09 emphasizing the site specific nature of the drainfield sites. There can be no moving of drainfields without formal re-review should building encroach into these sites since drainfield locations are not included in the newly proposed No-Build Zones.*

ROLL CALL TO
(Add F.O.F. #28)

On a roll call vote, the motion passed unanimously.

**ROLL CALL TO
ADOPT
AMENDED
F.O.F.
(FPP 08-15)**

On a roll call vote, the motion passed unanimously.

**MOTION TO
RECOMMEND
APPROVAL**

AuClaire made a motion seconded by Hall to adopt Staff Report FPP 08-15 as conditioned and recommend approval to the Board of County Commissioners.

**BOARD
DISCUSSION**

AuClaire had a question concerning two conditions which were saying the same thing in her opinion. She wished to strike one of them.

**MOTION
(strike Condition
#4)**

AuClaire made a motion and Pitman seconded to strike standard condition #4.

**ROLL CALL
(Strike Condition
#4)**

On a roll call vote, the motion carried unanimously.

**BOARD
DISCUSSION**

Cross would like to speak to DeKort's point of no vegetative buffer on the lots and the no build sites which allowed grazing. He asked by how much the no build sites exceeded the floodplain.

Hogle said it was lot specific. It was not a uniform dimension. The applicant had taken the common area and established that as a defined no build zone.

Cross asked if he considered establishing a vegetative buffer around the wetlands.

Hogle said he did not go to that extent due to defensibility. It could be viewed as him being arbitrary. He thought the buffers were a good idea, but he did not put them in because he did not have the regulations to back up the action.

DeKort asked if the board had the regulations to enforce the no build zones.

Hogle said no, but they had been used before in the county and do have a precedent.

Toavs said the board was not enforcing the no build zones, the applicant put that restriction on themselves.

Hogle said it was an attempt by the applicant to mitigate the impacts. If there was not such a proposal, there was a question if the impacts could be mitigated. He read from his staff report which said the impacts to the area depend on the no build zones. There was no way to enforce no build zones, but it did put the future owners on notice that the area has been reviewed with the area of no build intended not to be developed.

Mower brought up the fact an owner could graze an animal up to the fence line which goes against many things the board had tried to do concerning protective barriers to wetlands, rivers, creeks, etc. The back lots property lines back up to the wetlands.

The board discussed the wetlands and the precedent they would be setting if they allowed grazing up to the sensitive area.

Cross said it was a difficult decision because the application was first denied, the applicant did a midcourse correction and resolved the issues staff had with the development enough for staff to recommend approval and now they had come back and there were issues which weren't addressed in the first board meeting.

Mower said if they could define a no build zone as an area where nothing could happen, then that would take care of the problem.

Santa who was a realtor brought up the fact that defining a no build zone now could lead to messes with other areas in which the term was used. Several places think it was one thing and now to define it as another could open up potential headaches.

The board and applicant discussed the ramifications of no build zones verses setbacks and vegetative buffers.

Mulcahy brought up past history of the previous owners grazing animals on the land right up to the wetlands and the fact that the description of wetlands was odd in this case because the highway department undersized the culverts, so water backs up on the property. The main point was, were they going to impact the area with this development. He pointed out the ways in which they had taken into account the wildlife and surrounding areas.

Mower said he didn't disagree with Mulcahy, but if a person put a horse on an acre or an acre and a half, they would eat the grass to the ground. The fact that cattle once grazed there does not mean an animal in a confined space will not eat all the vegetation. It was a big problem with noxious weeds becoming established in the grazed area.

Cross said if the board wanted to do anything about the wording; it would be in condition #17. He was unclear about what the wording would look like.

The board discussed the best way to word the amendment to the condition.

MOTION
(Amend Condition #17)

Culpepper made a motion and Mower seconded to add a second sentence to state: *Lot owners may not build residences in the "No Build Zones", nor are septic systems, wells, or grazing allowed.*

ROLL CALL
(Amend Condition #17)

On a roll call vote, the motion passed unanimously.

**ROLL CALL
TO
RECOMMEND
APPROVAL AS
CONDITIONED**
(FPP 08-15)

On a roll call vote the motion passed with Mower and DeKort dissenting.

**REVISED
DRAFT
BIGFORK
NEIGHBORHOOD
PLAN**

A public hearing to adopt revisions to the Bigfork Neighborhood Plan and to include the Bigfork Neighborhood Plan as part of the Flathead County Growth Policy. This is a public hearing to consider all changes to the plan, both those originally proposed by the Bigfork Land Use Advisory Committee (BLUAC) and those suggested by the Flathead County Planning Board after the April 9, 2008 public hearing and the December 11, 2008 workshop. The Neighborhood Plan revisions need to be in general compliance with the Flathead County Growth Policy and Montana state law.

STAFF REPORT

BJ Grieve reviewed the revised draft of the Bigfork Neighborhood.

**BOARD
QUESTIONS**

Mower said they were just going to go over areas that they had concern with, not the whole thing.

Grieve said yes, the comments from the board on previous concerns had been taken into account and the problem areas resolved. He went over the history of this plan up until now.

Cross asked about the policy for all new developments to help with costs to local systems through impact fees. The county had no impact fee regulations.

Grieve said there were none right now. His understanding was the committee wanted to leave that phrasing in the plan so in the future, when the county does adopt impact fees, the plan will be cross referenced with those fees. Those fees had to be adopted by the county, the process was burdensome and that was why they had not adopted them as of yet. However, local fire districts could pursue impact fees ultimately with the blessing of the commissioners. The language in the plan would be applicable at that time as well.

Hall said the document contradicted itself with its language, required, adherence, etc. It sounded like a non regulatory document spelling out policy. It was a contradiction to itself.

In Grieves' opinion it was not contradictory. The plan could use regulatory language, but it does not change the fact it was not a regulatory document. It was a guidance document to be implemented through statutorily authorized implementation mechanisms.

Culpepper said he knew people had worked on this plan for a long time, but he had a problem with putting in a statement about impact fees when the fees do not exist. When the commissioners update the impact fees, then they can put those in. Another problem he had was that it discussed school expansions. School impact fees were not allowed due to Montana Code Annotated.

The board and Grieve discussed the impact fees for schools.

Mower said it was a philosophy document. It was Bigfork trying to design how they wanted to look.

Grieve said it does not infer that people could go out and start to try to collect impact fees.

Mower said the whole issue was put to bed with the statement at the beginning which said it was a non regulatory document.

Grieve said all the statements were valid concerns. There had been a lot of work put in and steps had been taken to make sure that it was a non regulatory document.

Cross said they were all valid points which might be better taken up after the public comment period.

**APPLICANT
PRESENTATION**

Craig Wagner, 1365 LaBrant Road, Bigfork, with the Bigfork Steering Committee, represented 175 plus Bigfork citizens who had spent thousands of hours on this plan tweaking it and trying to make it work. He deferred questions to Shelley Gonzales.

Shelley Gonzales, 4747 Foothill Road, Bigfork, reviewed the history of the plan and the revising which had taken place to bring the plan before the board again. She said some of the people on the board were new and did not know what had happened before to get the plan before the board again.

**BOARD
QUESTIONS**

Heim brought up a couple of typos which were noted and corrected.

Culpepper asked why the only information quoted was up to 2005 and did not include 2006-2008.

Gonzales said the plan had been put on hold for over a year. When the plan was written, it used the most current information available. As time had gone on, it would be a constant effort to update all the information as it became available and the line had to be drawn and they had to complete it and submit it. By law, it had to be updated every five years. They completed the document in 2007, since then it had been work shopped with the county and with the planning board. It was not feasible to continue to update.

Culpepper brought up an assistant program which was no longer in existence and said that had to come out of the document. He said it was a disservice to the people of Bigfork to not have the current information. He said they did do a lot of work and he appreciated that.

**AGENCY
COMMENTS**

None.

**PUBLIC
COMMENT**

Patricia Wagner, 1365 LaBrant Road, Bigfork, secretary to the Bigfork Steering Committee, said they had not posted a current plan on their website since the second revision. It became too expensive and they were a 501 3c. They had to call a limit on the revising and keep working.

Bill Myers, represented Bayside Park and Marine Center, LLC, 450 Grand Drive, Bigfork, wanted to comment that he was in favor of quality development in the Bigfork area and when he had objections to the Bigfork plan, it was not to make Bigfork look like a dump. He wanted to thank all the people who had worked so hard on this plan and the board for their suggestions. He commended the work of the last meeting which removed mandatory language. The plan was used, in his observation, by BLUAC as a policy or philosophy to recommend or deny an application. He called it the 'good taste society'. If it was in good taste, it was approved, if it didn't fit their taste, it was denied. The board needed to know BLUAC used the plan to approve or deny their application. He went through the policy and referenced several parts of the plan he had concerns with.

Charles Lapp, 3230 Columbia Falls Stage Road, had worked with Lakeside on their neighborhood plan and was very aware of how they proceed, and how they were planned. Neighborhood plans were always used even if it was a philosophic plan. He referenced several parts of the plan he had concerns with.

Russ Crowler, 2868 Lower Lost Prairie, Marion, represented members of the Bigfork Community, asked how many times land use had been put into effect due to a growth policy. He said it happened quite regularly. Recommendations were framed as mandatory. The first time an applicant was denied a zone change or subdivision due to recommendations in the Bigfork plan, there would be lawsuits. He said that as someone who recently served the county with a lawsuit on its subdivision regulations. As a side note, he commented there was a God and deputy county attorney Peter 'it only took me seven tries to pass the Montana bar' Steele will be defending the county in that lawsuit, so the board could be expecting to work on a new set of subdivision regulations soon. This would be a nightmare if it was passed. It would create problems for property owners. It was not written as a non-regulatory document and would not be interpreted that way. Their recommendation was it be sent back or there was a process called incorporation they could go

through. He did not want it passed.

**APPLICANT
REBUTTAL**

Paul Gurrant, 120 Conifer Lane, Bigfork, member of BLUAC had been part of the process from the beginning and the policies in the document were taken from a survey at the very beginning of the process. When BLUAC sent a recommendation to the planning board, it was only a recommendation.

**STAFF
REBUTTAL**

Grieve said Lapp brought up a good point about the amendment process the way it says: requires majority vote from BLUAC. He recommended stating the amendment process to the Bigfork Neighborhood Plan will follow the same amendment process as outlined in the Flathead County Growth Policy. He had a resolution prepared for the board, if they chose to send a recommendation to the commissioners.

**BOARD
DISCUSSION**

Cross asked the BLUAC members if they were comfortable when the plan leaves their hands and gets into the boards hands, that the language may be changed. He asked if any of the questions that had been raised would make them want to reconsider the language in the document.

Pat Wagner said they wanted to keep a standard that Bigfork had now. She asked the board to keep in mind how Bigfork looked now and approve places that look like they fit. They want the places to conform to Flathead County sign standards.

Cross reiterated that once the board gets into discussion, language may be changed and he was giving them an opportunity to change the language or hand the document as it was to the board.

Gonzales said they went through the document with public workshops and they made all the changes requested. Now at the eleventh hour there were people coming forward who don't live in Bigfork telling the board what they don't like about the plan and she felt bullied. She wanted constructive criticism; they would be back again and again before the board if all the suggestions were taken into account. She wanted them to keep in mind it was a non regulatory document.

Culpepper said he respected the people who came up to talk, but he wanted to say the people in Flathead County had a right to speak on the plan because what happened in Bigfork affected everyone in Flathead County. Based on being a new planning

board member, he felt there were problems with the plan and it should be sent back to BLUAC for more revisions. With the board's discretion, he would be willing to work with them to make sure the concerns were resolved.

Hall questioned a statement on the agenda that the plan will be made a part of the Flathead County Growth Policy.

Cross explained that all neighborhood plans which were approved by the commissioners were all attached separately to the growth policy.

Pitman said this was Bigfork's neighborhood plan. They were developing the plan so that in some future time, they could adopt zoning ordinances. They need the plan in order to adopt the zoning ordinances. He may not agree with the plan, but it was the way government works. You get a majority consensus, adopt the plan and then you could go on to zoning. He was not inclined to change much of anything. It was their document, their ownership, they had put a lot of effort into putting it together and it was time to move on.

Mower agreed with Pitman. He sat through a number of these meetings. This document went through a very public process. Everyone had their chance to weigh in, and he was not inclined to change much of anything as well. They had to keep in mind what the document was. It was not a mandate to do something, it was a philosophy. They were not going to get sued over what was in the document. There were a few places to tweak, but it was time to get it to the commissioners. The new board members had not been through these meetings a lot, but members who sat on the board longer had and the people putting together the plan had been through it a lot more than they had. It was time to get the plan in place and make it work.

Heim said he agreed with the other two. He understood how some people might try to misuse it, but it was the board's place to point out if it was trying to be used as regulatory or not and it was stated in the first paragraph that it was not a regulatory document. The only thing he was interested in changing at this point in time was the amendment paragraph.

Culpepper said he agreed with Mower in that Bigfork would not be sued over the document, Flathead County would because it would be in the growth policy. He said the plan talked about

affordable housing, yet discriminated against a certain class of people based on the type of house they were able to afford. The other thing he brought up was that the expansion of public schools through impact fees was against the law. The Montana legislature was struggling with the same issue. He asked what population diversity, and strict development, was. He did not know. He asked if the board was prepared to pass a non regulatory document which spoke about raising Flathead County taxes. He was not. He asked what village character was. In his opinion Bigfork did not want low income families in Bigfork and that to him was a problem. He asked what environmentally sound transportation was. He did not know. He had a problem with the subcommittees. He said it would be a cost to the taxpayers with county planner's time. He felt there were great problems with the plan. He said they could move to pass the plan but he did not see how it was even ready for the board to move to the county commissioners. Mower was right, Bigfork wouldn't be sued, Flathead County would and it was time that if Bigfork wanted the guidelines, then they should consider incorporation. It would be best for them and the citizens of Flathead County because the board was there to represent Flathead County as a whole not just as a select.

Pitman said many of the things said were true, but this was the type of document which would allow them to do that. It was a place to start from. These were not laws, but they might be desires. If that was what their vision was of their village, how could they be stopped from having a vision of their village.

Cross sensed that there was not unanimity among the board and assumed that since the hour was getting late, and the public hearing had been closed, they had the option of not passing a resolution tonight. If they wanted to go through this and give it the attention it might deserve, it might be done at a later date so that enough time and attention could be paid to the matter.

Mower said there were a lot of neighborhood plans in the county and this was one of the best ones as it sat. The resolution only needed to be passed with a majority vote. As far as he was concerned he was ready to vote on it as it stood.

Cross asked what the current resolution was.

Grieve read the rough draft of the resolution.

Cross felt that the board members who wished to make changes should have the opportunity to do so.

Mower said if all the people who wanted to make changes made changes, then they might as well rewrite the whole plan.

Cross did not want to ride over people who had concerns.

Mower said there had been times when he had voted no on something and others had voted yes and it did not hurt his feelings when the motion was passed. If the board could get a majority, then send the plan on. If they couldn't then they would have to rework it.

Culpepper said he was here to tell the board and tell the public that he wanted a good, sound document for Bigfork, but if the idea was for the board to move it forward, then they should have done it the last time they had it before them. There were new members on the board and he thought it was a disservice to the board members to not have the opportunity to make their recommendations, because he was sure he presented things the board didn't hear before. He asked how many of them knew some of the things he brought up. He brought up examples of what he spoke about. The board could not move something on that was inaccurate. He did not see how that could happen especially since there were things in the plan which were against Montana Code Annotated. If the board saw fit to move it forward, then by all means do so, but he was not prepared to send it through knowing there were some changes that needed to be looked at. The board had a judiciary responsibility to the citizens of Flathead County that the documents the board sent to them were accurate. So, if plans that came before were worse, he was not on the board then. He could only look at plans that were before him now and for as long as he was on the board. He will continue to stay up late at night to look at these documents day in and day out because it was his judiciary responsibility to the citizens of Flathead County to make sure that the documents were accurate and stayed in accordance with the laws of Montana.

Cross asked what the board wanted to make a motion on.

**MOTION TO
CONTINUE ON
MARCH 25,
2009**

Pitman moved and Culpepper seconded that the board continue the meeting until March 25, 2009.

**BOARD
DISCUSSION**

Mower made the comment that this was Bigfork's plan. The board should not be rewriting their plan. If they rewrite the plan then they should eliminate the neighborhood plans and the board should write them all. The plan was not theirs.

Toavs said it was theirs now and it had to comply with all the rules. The road design standards were not up to standards.

Mower said it was not a regulatory document.

Toavs said this was a guiding document that would over rule many opinions. He said the fact Mower himself had said many times that if BLUAC agreed with the application, then that was good enough for him. That told him the document had teeth.

Mower said that Bigfork knew more about the area and application than he did.

Toavs said he voted against a development which didn't have county standard roads because it was not safe. The Bigfork plan did not have county standard roads and the board was expected to pass the document on. Some of the things in the document did not belong in there. If they were to vote on it that night, he would vote no, but if there were a few things which could be changed to meet the requirements, then that's what they needed to do.

**ROLL CALL TO
CONTINUE
MEETING UNTIL
MARCH 25,
2009**

On a roll call vote, the motion passed with DeKort, Mower, and Heim dissenting.

**BOARD
DISCUSSION**

AuClaire clarified that the members of the board should come to the meeting with their concerns about the plan written down in the interest of time.

Cross asked that they have the page citations written down as well.

**COMMITTEE
REPORTS**

Committee B met and minutes had been emailed to bring everyone up to speed.

Committee A met before the meeting tonight and had sample maps and a date. Next meeting is Feb. 25, 2009.

Grieve said everyone on the planning board should be there.

Toavs said committee A had gone as far as they wanted to go before they received the blessing from everyone else on the planning board. That meeting would be the committee report to everyone and the commissioners would be there, so hopefully they would see the whole program and the sample map and the process they had gone through. They plan to invite heads of certain groups in the valley that they know will either be for or against the program to get their opinion. Allison Mouch did a very good job with the program and getting the maps to do what they were supposed to do.

Cross asked what type of meeting this was.

Grieve said it was a joint planning board/commissioner workshop and they had a concept, and an action plan. The question would be could they support the concept because after they hit the go button on the project, it was an expenditure of resources that could have great benefit to the county but if it would not be approved than it was not worth going into. That was the intent of the meeting on the 25th.

OLD BUSINESS

The old business was heard during the public comment.

The retreat will be at Jagz on February 18th at 6:00.

NEW BUSINESS

None.

ADJOURNMENT The meeting was adjourned at approximately 10:50 pm. on a motion by Pitman, seconded by AuClaire. The next meeting will be held at 6:00 p.m. on March 11, 2009.

Gordon Cross, President

Donna Valade, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: 4/8/09